09 S.B.Civil Writ Petition No.3229/2004

Date of Order : 06-08-2004

HON'BLE MR. N.P.GUPTA,J.

Mr.R.S.Choudhary, for the petitioner.

Heard learned counsel for the petitioner. Perusal of Annex.9, shows that Tehsildar was intimated about the appointment of Receiver over Khasra No.86 and 87/224, total 31 bighas 15 biswas vide order dated 8.11.2001. Then from Annex.10, it appears that Tehsildar addressed some communication on 16.11.2001 pointing out "ग्राम मेहराणा के ख.नं. 87/224 की भूमि तरमीम शुदा नहीं हैं तथा जैन प्याऊ की भूमि के कब्जे के बारे में जानकारी नहीं हुई" whereupon the SDO conveyed to Tehsildar that location of land be identified, by recording the statement of neighbours, a direction was also given to hold a detailed inquiry. Thereafter the Tehsildar appears to have held an inquiry by recording evidence, and has taken possession of land, on which Receiver was appointed. As appears from Annex.11, and specially para 5, that according to present petitioner, Jain Pyau has given wrong statement before the Subordinate Court, and by misleading that authority, got the land attached exparte. Look at these averments, does show that Tehsildar did make inquiry, and did record some evidence, wherein the petitioner did not participate. The petitioner has not produced before the court, the conclusion arrived at by Tehsildar, and reasons given, nor has made any averments in the writ petition about any such inquiry having been held.

It is in the above background that the petitioner seeks to challenge the impugned orders Annexure-10 and Annexure-12 dt. 19.11.2001 and 7.1.2002 passed by the Sub divisional Officer, so also the orders dt. 14.2.2002 of the Revenue Appellate Authority, and dated 29.7.2003 of the Board of Revenue.

So far the order dt. 19.11.2001 being Annexure-10 is concerned, it has already been considered in the foregoing paragraph. By this order S.D.O. had directed the Tehsildar to look into the matter, record the statements of the

witnesses, and identify the land, and proceed. Then, vide order dt. 7.1.2002 being Annexure-12, the learned S.D.O. had rejected the petitioner's application praying that the plaintiff has got the land no. 87/225 attached in an ex-parte manner by giving wrong statements, and misleading the Court, therefore, the land be ordered to be released from the receiver. The learned S.D.O. found that the land in question was given in receivership, and the Tehsildar has taken the land in receivership after taking measurement on the plot, the plaintiff has filed a suit for declaration of Khatedari rights wherein the matter is to be decided after taking evidence of both the parties. Thus, the application was dismissed.

It is against this order that the petitioner filed appeal before the learned Revenue Appellate Authority which has been dismissed as not maintainable, recording the finding that Tehsildar has taken possession of the land after measuring it on the site.

It is against this order that a revision was filed before the Board of Revenue which has been dismissed by the order. 14.2.2002 maintaining that Tehsildar had taken possession after measuring it on the site, and has taken possession of the land on which receiver was appointed. It was further observed that if there is dispute about the boundary, it can be decided in the main suit itself, but then at this stage the petitioner has not produced any evidence which may show that the land taken in the receivership by the Tehsildar includes the petitioner's land.

In my view, firstly, the order of the S.D.O. dt. 7.1.2002 was not appealable before the Revenue Appellate Authority, and the petitioner had not filed any revision against that order. Secondly, notwithstanding all this, all the three Courts have recorded a concurrent finding of fact that the Tehsildar has taken possession of the land on the site after taking measurements, and identifying the land. The learned Board of Revenue has also found that even at this stage the petitioner has not produced any material on the basis of which it can be believed that the land in possession of Tehsildar includes the petitioner's land. These findings are not shown by the petitioner to be vitiated on any of the ground available under Article 226 jurisdiction.

In these circumstances, I do not find any sufficient ground to interfere with the impugned order of learned courts below. The writ petition is, therefore, dismissed summarily.

(N.P.GUPTA),J.

Srawat/-